IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2781 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER

Versus

BHARATKUMAR P CHAUHAN

Appearance:

1. Special Civil Application No. 2781 of 2004

MR JR NANAVATI for Petitioner No. 1

MR AJ SHASTRI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 24/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the legality of the award dated 30th December 2003 passed by the Industrial Tribunal, Rajkot allowing reference

2. The respondent had approached the Industrial Tribunal by filing the above mentioned reference seeking to be placed in the pay-scale of Rs.700-1300 instead of the scale of Rs.425-700 assigned to him. It was the case of the respondent that he is discharging the duty as Garden Supervisor and in that capacity he is required to discharge all the responsibilities of the Head of the Department. He had submitted that other Heads of the Departments are also placed in the scale of Rs.700-1300 and that therefore his post should be upgraded and pay should be revised to that of the scale of Rs.700-1300.

3. The petitioner i.e. Jamnagar Municipal Corporation had filed its reply and resisted the claim. It was pointed out that the pay-scale attached to the post is as per the justification found by the Corporation. The claim for upgradation of the post was opposed.

4. The Industrial Tribunal by its impugned award came to the conclusion that fixing the pay of the respondent in the scale of Rs.425-700 is not justified and that the post should be upgraded in the scale of Rs.700-1300 and accordingly further revision of scale should be allowed in favour of the respondent. To come to the said conclusion, the Industrial Tribunal relied on two grounds. Firstly, it was found that other Heads of the Departments of the Corporation were drawing salary in the scale of Rs.700-1300 and therefore the respondent who was discharging the duty of the Head of the Garden Department could not have been placed in the scale of Rs.425-700. The second ground relied upon by the Tribunal was that in other Municipal Corporations such as, Surat, Rajkot and Ahmedabad, the post of Garden Supervisor carries the scale of Rs.700-1300 and that therefore on the ground of "equal pay for equal work" the respondent workman would be entitled to upgradation of the scale of pay.

5 Appearing for the petitioner, learned counsel Shri Nanavati submitted that there was no material before the Industrial Tribunal to grant the higher scale to the respondent. He submits that pay fixation is the task of the Executives and the Court should not have interfered with the pay-scale attached to the post without justification. He has submitted that there is no violation of the principles of equal pay for equal work since the respondent had not led any foundation for application of the said principle.

6. Appearing for the respondent, learned advocate Shri A.J.Shastri vehemently opposed the petition. He submits that in exercise of powers under Article 227 of the Constitution, this Court should not interfere with the award of the Industrial Tribunal, which according to him is in exercise of the discretionary powers of the Tribunal. He submits that the direction for upgradation of the post in the higher scale being justified, even otherwise, interference is not called for.

7. Having heard the submissions made by the learned counsel appearing for the parties, I am of the view that the Industrial Tribunal seriously erred in law in allowing the reference in favour of the respondent. There was absolutely no material on record to permit the Tribunal to direct upgradation of the post. The scale of pay granted to other heads of the Departments would not decide the scale of pay to be assigned to the post of Garden Supervisor held by the respondent. The basis that Garden Supervisors in other Municipal Corporations drawing higher pay adopted by the Industrial Tribunal is equally erroneous. By now it is well settled that to apply the principles of "equal pay for equal work" number of factors have to be taken into consideration including the question of educational qualifications and experience required for recruitment to the post, work-load involved, the duties performed and such other relevant circumstances. The principle of "equal pay for equal work" cannot be applied in abstract and simply because some other Corporations have posts which carry the same nomenclature, that by itself is not the relevant factor which can permit the Court of law to direct pay parity in favour of an employee. There are numbers of decisions of the Hon'ble Supreme Court as well as this Court laying down the above proposition. In the case of Union of India v. Tarit Ranjan Das, reported in (2003) 11 SCC 658, the Hon'ble Supreme Court observed that the principle of "equal pay for equal work" cannot be applied merely on the basis of designation or nature of work and other relevant factors also have to be taken into account and burden of proof of equality lies on the employee who claims such parity.

8. In the present case, I do not find any material whatsoever produced by the respondent before the Industrial Tribunal which would have permitted the Tribunal to grant the relief of upgradation of the pay scale attached to the post.

9. In conclusion, I find that the Industrial

Tribunal exercised jurisdiction not vested in it and thereby committed jurisdictional error. The limitation of the scope of judicial review under Article 227 of the Constitution of India, therefore, would not restrain this Court from interfering with the impugned award.

10. In the result, the petition succeeds and the impugned award of the Industrial Tribunal is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)